

**REMARKS:**

Claims 1-31 are currently pending in the application.

Claims 32-50 have been previously canceled without *prejudice*.

Claims 1-31 stand rejected under 35 U.S.C. § 112, second paragraph.

Claims 1-31 stand rejected under 35 U.S.C. § 102(e) over U.S. Publication No. 20020046294 A1 to Brodsky et al. (hereinafter “*Brodsky*”).

Applicants note with thanks the Examiner’s response of 3 December 2009 and the Advisory Action of 23 February 2010. Applicants further notes with thanks the Examiner’s statement in the Advisory Action that the amendments to Applicants claims made in the Amendment after Final require a new search and consideration.

Applicants respectfully submit that all of Applicants arguments and amendments are without *prejudice* or *disclaimer*. In addition, Applicants have merely discussed example distinctions from the cited prior art. Other distinctions may exist, and as such, Applicants reserve the right to discuss these additional distinctions in a future Response or on Appeal, if appropriate. Applicants further respectfully submit that by not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner’s additional statements. The example distinctions discussed by Applicants are considered sufficient to overcome the Examiner’s rejections. In addition, Applicants reserve the right to pursue broader claims in this Application or through a continuation patent application. No new matter has been added.

**I. Support for Applicants’ Current Claim Amendments**

In compliance with 35 U.S.C. § 112, Applicant respectfully submits that support for Applicant’s current claim amendments may be found in at least the following portions of Applicant’s specification, as filed, provided below for the Examiner’s convenience:

In the example negotiation scenario being illustrated, enterprises 12a and 12f supporting collaboration software 16a and 16f, respectively, wish to collaborate with one another. Accordingly, as illustrated in FIGURE 3, enterprises 12a and

12f begin negotiating a standard to serve as the basis for collaboration between them. Through MMNS 18, enterprises 12 and 12f negotiate one or more meta-model elements that will be used to formulate a meta-model describing a negotiated TP A customized for their needs and suitable for their future collaboration. The negotiated meta-model elements and resulting meta-model may be distinctive to collaboration software 16a and 16f. In one embodiment, enterprises 12a and 12f may select one or more meta-model elements from a set of possible meta-model elements communicated to or otherwise made available to the enterprises 12a and 12f by MMNS 18. The set of possible meta-model elements may be provided in the form of a template accessible to enterprises 12. *The set of possible meta-model elements is preferably constructed to include all meta-model elements that would be of interest to enterprises 12 within the marketplace environment of network service provider 14. However, at least in certain embodiments, MMNS 18 may also support the ability of enterprises 12 to define new meta-model elements for use in combination with or instead of pre-validated meta-model elements in the predefined set of possible meta-model elements supported by MMNS 18.* (page 9, line 16 – page 10, line 3). (emphasis added).

## **II. Rejection Under 35 U.S.C. § 112, Second Paragraph**

Claims 1-31 stand rejected under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention. Applicants respectfully disagree and respectfully traverse the Examiner's rejection of Claims 1-31 under 35 U.S.C. § 112, second paragraph.

In particular, the Examiner states the following:

The applicant argues that meta-model in the specification page 7, lines 13-15 is clearly defined. Though the examiner does agree with the applicant that the term "meta-model" does occur in the specification the examiner asserts that the term is not defined in a way to allow one of ordinary skill in the art to use the invention.

(3 December 2009 Final Office Action, pages 2-3). Applicants respectfully disagree with the Examiner's assertion that one of ordinary skill in the art at the time the application was filed would not understand the term "meta-model" in such a way as to be able to make and use the invention. Applicants respectfully submit that references to the use of the term "meta-model" in Applicants' specification already made of record is more than sufficient to distinctly claim the subject matter so as to be clear to one of ordinary skill in the art as to what the claimed invention entails.

Furthermore, if Examiner continues to contest Applicants' position that "meta-model" is a term that was commonly known in the art at the time of the invention, Applicants respectfully request the Examiner refer to the plethora of other patents and publications dated prior to the filing date of the subject application that employ this term. Thus, the term "meta-model" was known to one of ordinary skill in the art at the time of the invention.

Thus, for at least the reasons detailed above, Applicants respectfully request that the rejection of Claims 1-31 under 35 U.S.C. §112, second paragraph, be withdrawn.

### **III. Rejections Under 35 U.S.C. § 102(e)**

Claims 1-31 stand rejected under 35 U.S.C. § 102(e) as anticipated by *Brodsky*. Applicants respectfully submit that Applicants' claims in their current, amended form contain unique and novel limitations that are not disclosed by *Brodsky*. Thus, Applicants respectfully traverse the Examiner's anticipation rejection of Claims 1-31 under 35 U.S.C. § 102(e) over *Brodsky*.

Anticipation is a question of fact. *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628,631 (Fed. Cir. 1987). There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *Scripps Clinic & Research Found. v. Genentech Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991).

In rejecting Claim 1, the Examiner states the following:

Brodsky teaches receive an indication that two or more enterprises wish to negotiate a standard for collaborations between the two or more enterprises (¶ 2490).

\* \* \*

Brodsky teaches communicate the negotiated meta-model to the two or more enterprises for collaborations between the two or more enterprises according to the standard for collaborations in the negotiated meta-model (¶ 2503).

(3 December 2009 Final Office Action, pages 7-8). (Emphasis Added). For reasons already made of record, Applicants respectfully disagree with the Examiner's assertion that *Brodsky*

discloses each and every element of Applicants' claims. Furthermore, Applicants respectfully disagree with the Examiner's assertions and respectfully directs the Examiner's attention to paragraph 2490 of the specification of *Brodsky*, provided below, on which the Examiner relies:

A further application of the connectors of the present invention is in connection with groupware, and especially linking "islands of groupware" together. "Groupware" is a broad term applied to technology that is designed to facilitate the work of groups. Groupware technology may be used to communicate, cooperate, coordinate, solve problems, compete, or negotiate. A Groupware suite of applications is comprised of programs that help people work together collectively, even if located remotely from each other. Groupware services can include the sharing of calendars, collective writing, e-mail handling, shared database access, electronic meetings, video conferencing, and other activities.

As shown above, the portions of *Brodsky* on which the Examiner relies fails to disclose at least the elements of Claim 1, as amended, of "*receiv[ing] an indication that two or more enterprises wish to negotiate a standard for collaborations between the two or more enterprises.*"

By contrast, the portion of *Brodsky* on which the Examiner relies merely discloses, among other things, that groupware technology **may** be used to negotiate and that groupware services can include sharing of activities. However, this doesn't mean that *Brodsky* negotiates *a standard for collaborations between the two or more enterprises* or that *Brodsky receives an indication that two or more enterprises wish to negotiate*. The terms "may" and "can" are not definite in *Brodsky*. As shown above, the only mention of any negotiation is described an indefinite within *Brodsky*.

Applicants respectfully submit that this mere mention of negotiate and sharing of services is insufficient to provide disclosure of "*receiv[ing] an indication that two or more enterprises wish to negotiate a standard for collaborations between the two or more enterprises,*" as required by Claim 1, as amended.

Furthermore, *Brodsky* cannot properly be considered to disclose "*communicat[ing] the negotiated meta-model to the two or more enterprises for collaborations between the two or more enterprises according to the standard for collaborations in the negotiated meta-model,*" for at least the reason that there is simply no disclosure of *receiving an indication that two or more enterprises wish to negotiate a standard* in the first place.

The portion of *Brodsky* relied on by the Examiner is silent, and thus, fails to disclose any

detail as to how this negotiation process or sharing of services occurs and thus, also fails to disclose the above-referenced elements of Claim 1.

The Examiner further states the following:

Brodsky teaches *provide the two or more enterprises access to the set of one or more metamodel elements* (¶ 2503). Brodsky teaches *receive selections of one or more of the meta-model elements for negotiation and incorporation into a negotiated meta-model*, the negotiated meta-model describing an agreement between the enterprises as to collaborations between the two or more enterprises (¶ 78, 36, 2493, 2488, 55, 25, 23, 107).

(3 December 2009 Final Office Action, pages 7-8). (Emphasis Added). Applicants respectfully disagree with the Examiner's assertions and respectfully direct the Examiner's attention to paragraph 2503 of the specification of *Brodsky*, provided below, on which the Examiner relies:

[2503] FIG. 42 illustrates a commercial transaction where real goods are shipped from a seller to a buyer, and various forms of electronic payment and secured electronic payment are used by the buyer to pay the seller, with banks and financial institutions connected through the connectors described herein. Specifically, a merchant or manufacturer 4101 sells a product to a customer 4103 that he has no "history" with. The product is shipped 4605. However, the buyer 4103 does not wish to be parted from his money until the goods are received, inspected, approved, and "accepted", while the seller 4101 does not want to give up control of the goods until he has been paid. This fundamental commercial conflict has led to various paradigms, most involving hard copy "near moneys" or instruments of one form or another. Today, the financial transactions are most frequently those involving electronic fund transfers, and electronic versions of notes, instruments, negotiable instruments, documentary drafts, payment orders, letters of credit, warehouse receipts, delivery orders, bills of lading, including claims on goods, that is, documents of title that purport to transfer title or physical custody of goods to the bearer or to a named person, and security interests in goods. *Typically, the customer 4103 executes an instrument in favor of the seller 4101, directing the buyer's bank 4121 to pay buyer's money to the seller 4101 through seller's bank 4125. Normally, this is a simple electronic transaction between buyers and sellers who have dealt with each other before, dealing through banks or financial intermediaries who have dealt with each other before, and who are using the same or compatible software applications. However, in the extraordinary case where these preconditions are not satisfied, the connectors of the invention facilitate the electronic, bank-to-bank, side of the transaction.* (Emphasis added).

As shown above, the portions of *Brodsky* on which the Examiner relies fails to disclose at

least the elements of Claim 1, as amended, of “*provid[ing] the two or more enterprises access to the predefined set of one or more meta-model elements*,” and “*receiv[ing] selections of one or more of the predefined meta-model elements and one or more meta-model elements that is newly defined by at least one of the enterprises for negotiation and incorporation into a negotiated meta-model*.”

By contrast, the portion of *Brodsky* on which the Examiner relies merely discloses, among other things, that financial institutions who have dealt with each other before use the same or compatible software and that situations exist in which financial institutions do not use the same or compatible software, thus requiring a negotiation to arrive at a standard for communication between the two entities. For entities already using the same compatible software, there is no need to negotiate a standard for collaboration as a common standard already exists among the two compatible applications. As shown above, the only mention of a need to negotiate to arrive at a standard for collaboration pertains to the extraordinary case where two entities are using incompatible software applications.

Applicants respectfully submit that this mere mention of a need for such a negotiation is insufficient to provide disclosure of “*provid[ing] the two or more enterprises access to the predefined set of one or more meta-model elements*,” and “*receiv[ing] selections of one or more of the predefined meta-model elements and one or more meta-model elements that is newly defined by at least one of the enterprises for negotiation and incorporation into a negotiated meta-model*,” as required by Claim 1, as amended.

However, the need for such a negotiation is simply an abstraction within *Brodsky* and is essentially a black box that may identify a need but does not perform a function and even if it did, how it does so is left undisclosed within *Brodsky*. In fact, the portion of *Brodsky* relied on by the Examiner is silent, and thus, fails to disclose any detail as to how this negotiation process occurs and thus, also fails to disclose the above-referenced elements of Claim 1.

Furthermore, the communication occurring between two entities using compatible software applications also cannot properly be considered to be “*provid[ing] the two or more enterprises access to the predefined set of one or more meta-model elements*,” or “*receiv[ing] selections of one or more of the predefined meta-model elements*,” as there is no need for negotiation of a standard for inter-enterprise collaboration between trading partners to occur as the software’s

collaboration standard is compatible among the two trading partners to begin with.

While further distinctions exist between Claim 1 and *Brodsky*, the failure of *Brodsky* to disclose at least the elements of “*providing] the two or more enterprises access to the predefined set of one or more meta-model elements*,” and “*receiv[ing] selections of one or more of the predefined meta-model elements and one or more meta-model elements that is newly defined by at least one of the enterprises for negotiation and incorporation into a negotiated meta-model*,” as discussed in detail above, is more than sufficient to patentably distinguish Claim 1 from *Brodsky*.

Accordingly, Applicants respectfully request that the rejection of Claims 1-31 under 35 U.S.C. § 102(e) as anticipated by *Brodsky* be withdrawn.

**I. Office Action Fails to Properly Establish a *Prima Facie* case of Anticipation over *Brodsky***

Applicants respectfully submit that the allegation in the present Office Action that *Brodsky* discloses all of the claimed features is respectfully traversed. Further, it is noted that the Office Action provides no concise explanation as to how *Brodsky* is considered to anticipate all of the limitations in Applicants ‘Claims. *A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if each and every element of a claimed invention is identically shown in that single reference.* MPEP § 2131. (Emphasis Added).

Applicants respectfully point out that “it is incumbent upon the examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference.” Ex parte Levy, 17 U.S.P.Q.2d (BNA) 1461, 1462 (Pat. & Tm. Off. Bd. Pat. App. & Int. 1990). Applicants respectfully submit that *the Office Action has failed to establish a prima facie case of anticipation in Claims 1-31 under 35 U.S.C. § 102 with respect to Brodsky because Brodsky fails to identically disclose each and every element of Applicants’ claimed invention, arranged as they are in Applicants’ claims.*

**V. Applicants' Claims are Patentable over *Brodsky***

Applicants respectfully submit that, as discussed above, Claims 1, 11, 21, and 31 are considered patentably distinguishable over *Brodsky* for at least the reasons discussed above in connection with Claim 1.

Furthermore, with respect to dependent Claims 2-10, 12-20, and 22-30: Claims 2-10 depend from Claim 1; Claims 12-20 depend from Claim 11; and Claims 22-30 depend from Claim 21. As mentioned above, each of Claims 1, 11, 21, and 31 are considered patentably distinguishable over *Brodsky*. Thus, dependent Claims 4, 5, 14, 15, 24, and 25 are considered to be in condition for allowance for at least the reason of depending from an allowable claim.

Thus, for at least the reasons set forth herein, Applicants respectfully submit that Claims 1-31 are not anticipated by *Brodsky*. Applicants further respectfully submit that Claims 1-31 are in condition for allowance. Thus, Applicants respectfully request that the rejection of Claims 1-31 under 35 U.S.C. § 102(b) be reconsidered and that Claims 1-31 be allowed.

**CONCLUSION:**

In view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

A Request for Continued Examination (RCE) is being filed electronically herewith to facilitate the processing of a credit card authorization. Although Applicants believe no additional fees are deemed to be necessary; the undersigned hereby authorizes the Director to charge any additional fees which may be required, or credit any overpayments, to **Deposit Account No. 500777**. If an extension of time is necessary for allowing this Response to be timely filed, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) to the extent necessary. Any fee required for such Petition for Extension of Time should be charged to **Deposit Account No. 500777**.

**Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.**

Respectfully submitted,

28 February 2010

Date

/Steven J. Laureanti/signed

Steven J. Laureanti, Registration No. 50,274

BOOTH UDALL, PLC  
1155 W. Rio Salado Pkwy., Ste. 101  
Tempe AZ, 85281  
214.636.0799 (mobile)  
480.830.2700 (office)  
480.830.2717 (fax)  
steven@boothudall.com

**CUSTOMER NO. 53184**

Amendment

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